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U.S. Citizenship and Immigration Services

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[redacted]

FILE: LIN 04 253 52702 Office: NEBRASKA SERVICE CENTER Date: MAY 02 2006

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences and a member of the professions holding an advanced degree. The petitioner seeks employment as a researcher in electrical/biomedical engineering. At the time she filed the petition, the petitioner was a postdoctoral fellow at the University of Utah, where she had previously earned her doctorate.[1] The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. An additional finding of exceptional ability would serve no constructive purpose and therefore that additional claim is moot. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion

[1] Information provided by the petitioner indicates that the fellowship ended in September 2004, the same month she filed the petition. The petitioner has not mentioned or documented any subsequent employment.

of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

> I developed [an] interest in acquiring my professional experience as a researcher in biomedical signal processing and engineering. In particular, I hope to continue working in exploring the usefulness of signal processing techniques as tools for improving the quality of health care at all stages of human life. . . .
>
> During the past several years, I have worked extensively in the field of signal processing with the emphasis [on] biomedical engineering. I have made excellent accomplishments in all the projects [in] which I have [been] involved. As recognition [for] my outstanding performance, I have become the recipient of graduate scholarships, assistantships and fellowships at the University of Utah, Asian Institute of Technology and the University of Mortuwa. . . .
>
> Preeclampsia is a major cause of maternal mortality as well as perinatal morbidity and mortality. . . . Although clinical manifestations do not appear until the final three months [of pregnancy], the foundations for preeclampsia are thought to be established in the first 10-12 weeks of gestation. At present, the cause of preeclampsia is unknown and there is no reliable

> way of predicting who will and who will not develop preeclampsia during early stages of pregnancy. . . .
>
> One of my current research efforts is to develop advanced signal processing techniques to enhance the estimation of fetal cardiovascular health. The performance of these techniques has been evaluated using human fetal data as early as 10-20 weeks of gestation. I have also implemented new algorithms for processing and extracting blood velocity waveforms from Doppler ultrasound signals. I am the first author of the pending United States patent for the algorithm developed to identify functional relationships between maternal and fetal blood flow velocity waveforms as a method for detecting obstetric complications during early stages of pregnancy. . . .
>
> Results indicated that the noninvasive methodologies I have developed have the potential to become standard prenatal tests during early stages of pregnancy. . . .

The petitioner states that she is submitting "letters from renowned professors who are very familiar with my research and academic career." All of these professors are on the faculty of the University of Utah. The letters range from extremely general to highly specific in their evaluation of the petitioner's work. At one end of this spectrum is the letter from [redacted], president of Space & Signals Technologies, LLC, the body of whose seven-sentence letter reads, in its entirety:

> I had the pleasure of teaching [the petitioner] in an advanced Digital Signal Processing class. Although the class had many students, I remember her as being particularly gifted. She easily earned an A in the class. Besides her understanding of the equations, she also had a good feel for the concepts and how to apply her learning to real-world problems.
>
> She works very hard and gets along well with people. Although she has continued to excel in the area of advanced Digital Signal Processing research, I feel she would also do as well in Industry as she has done in Academia.
>
> It is hoped that this letter will serve to strengthen [the petitioner's] case, and that her petition will be granted.

The above letter says little more than that the petitioner was a good student. The letter contains no mention of medical applications of digital signal processing.

At the other end of the range is the letter from [redacted], who states:

> I need to emphasize that preeclampsia is a common and serious complication of the latter half of pregnancy that costs the United States many newborn lives each year. . . .We have historically been unable to predict with any precision whatsoever which pregnant women will, and which will not, develop this serious problem. [The petitioner's] research has the

> very real potential of revolutionizing prenatal care as it has been performed over the past 75 years in this country.
>
> In the course of her thesis research [the petitioner] developed a technique for simultaneous recording of the maternal and fetal heart rates using a combination of Doppler ultrasound and maternal EKG recordings. More importantly, at least to me, she was able to apply a complicated mathematical analysis to a large amount of clinical data and identify a relationship between the maternal and fetal heart rates (and, presumably, circulations) that thus far has very good clinical sensitivity and specificity. . . .
>
> I am confident that her work will result in improved outcomes for pregnant women in this country.

The petitioner submits copies of her published articles and proofs of upcoming publications. The petitioner documents two requests for copies of her work, but no evidence that citations of her work have appeared in published articles.

The director instructed the petitioner to submit further documentation about her roles in research projects, and "copies of any published articles by other researchers citing or otherwise recognizing [the petitioner's] research and/or contributions." The director also asked the petitioner to demonstrate the extent of her influence on the field as a whole.

In response, the petitioner states that, given the time-consuming processes involved in gathering data and peer-reviewing manuscripts, "it is difficult to find a large number of citations at this moment." The petitioner offers no evidence that a significant number of citations are in press or otherwise imminently forthcoming. Without such evidence, the petitioner's implication that her work will be cited at a later time is little more than speculation.

The petitioner submits a copy of a grant proposal that cites her work. The author of the grant proposal is one of her collaborators at the University of Utah, and he is a credited co-author of the cited articles. Thus, the author of the proposal simply cited his own work in the proposal. Self-citation is, of course, an accepted practice in academia, and it is to be expected when a researcher carries out a succession of inter-related projects. At the same time, self-citation is clearly not an indication of the widespread impact of a given researcher's work.

The petitioner submits a copy of her successful grant application for a $21,500 predoctoral fellowship from the American Heart Association (AHA). Materials in the record indicate that the petitioner was "the top ranked AHA Western States Affiliate predoctoral fellowship applicant" in 2001. While this ranking is not an honor to be dismissed lightly, at the same time we cannot find that it demonstrates the impact that the petitioner's work has had on the field. By nature, a grant application seeks future funding for work that has not been done yet. At best, the ranking of the application demonstrates that the AHA considered the petitioner's area of inquiry to be important, and expressed confidence in the petitioner's ability to carry out the research described in the application.

The petitioner has highlighted the most positive passages from grant reviewers' evaluations. For instance, one reviewer called the petitioner's proposal "extremely attractive," which the petitioner has highlighted; the petitioner did not call similar attention to the same reviewer's assertions about "potential pitfalls in the work" and the concern that "the lofty goals of the proposal may be outside the reach of a doctoral candidate." The petitioner observes that the other reviewer was "enthusiastic about the potential outcomes," but the same reviewer stated: "It is unfortunate, however, that the applicant has not developed in great detail the scientific plan for the proposal." Clearly these were not major concerns, as the grant was ultimately approved with high marks; but at the same time, the petitioner's selective emphasis on the most favorable portions of the comments does not present a balanced picture.

The director denied the petition, stating that most of the evidence regarding the significance of the petitioner's work has come from her own circle of collaborators and mentors. The director noted the absence of citations or other independent evidence of wider impact in the field, and concluded that the petitioner had applied for the waiver prematurely, before she had established any demonstrable track record of significant achievements.

On appeal, the petitioner states:

> As the submitted evidence shows, my exceptional research and development abilities in Biomedical signal processing and engineering will improve the HEALTH CARE and the ECONOMY of the United States. . . . The evidence of recognition and significant contributions to the field by peers including two independent reviewers demonstrate the UNIQUENESS of my training.

(Emphasis in original.) The mention of "evidence of recognition" is an apparent reference to 8 C.F.R. § 204.5(k)(3)(ii)(F). That regulatory clause indicates that evidence of recognition for achievements and significant contributions to the field can form part of a claim of exceptional ability in the sciences, arts or business. From the construction of the statute, it is clear that aliens of exceptional ability are, generally, subject to the job offer requirement; evidence of exceptional ability is not *prima facie* evidence of eligibility for the waiver. Also, as noted above, the comments from "two independent reviewers" do not recognize any past achievement or contributions by the petitioner; they comment on the feasibility of proposed future work. Announcing one's intention to pursue research at some future time is not an achievement or contribution. The petitioner's project, like countless other graduate-level projects at universities throughout the U.S. and around the world, received grant funding.

The remainder of the petitioner's appeal is simply a list of previously submitted documents and letters, already considered above. This evidence is entirely consistent with the director's finding that the filing was premature; it contains, for instance, proposals that have not been approved yet; articles that have not been cited yet; and a patent application that was still pending at the time of filing.

The record shows that the petitioner's former professors at the University of Utah saw promise in her (although she apparently ceased to work at that university within weeks of the filing date). The petitioner has

not shown that her existing achievements have set her apart from her peers to an extent that would warrant a special, additional immigration benefit (the waiver) over and above the classification she seeks. We do not dispute that the petitioner intends, in the future, to pursue worthwhile research relating to a serious medical problem, but intentions are not results, nor are they impact on the field.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.